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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.     | CONFIRMATION NO. |
|-----------------|-------------|----------------------|-------------------------|------------------|
| 10/719,434      | 11/21/2003  | Kjell Kristoffersen  | 135248 (AT 12553-01035) | 2972             |

7590 01/05/2007  
Dean Small  
Armstrong Teasdale LLP  
Suite 2600  
One Metropolitan Square  
St. Louis, MO 63102

| EXAMINER |
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JAWORSKI, FRANCIS J

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3768

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE  | DELIVERY MODE |
|----------------------------------------|------------|---------------|
| 3 MONTHS                               | 01/05/2007 | PAPER         |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/719,434

Applicant(s)

KRISTOFFERSEN

Examiner

Jaworski Francis J.

Art Unit

3768

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 - 6, 8 - 17, 19 - 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 - 6, 8 - 17, 19 - 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                            |                                                                                         |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                           | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1 –6, 8 – 17 and 19- 20 are again rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Interim guidelines provided by the PTO regarding interpretation of the statute require that the Examiner first review all claims to determine if a physical transformation is occurring, i.e. if the method or apparatus result in the transformation of an article into a different state or thing. Here the apparatus and structure are directed to rearranging and altering a data stream, hence this first criterion is unmet. If there is no physical transformation as is the case here, then a “useful, concrete and tangible result “ must occur, and not merely a particular decimated data stream as a result (claim 1) or structure for providing a decimated and mixed data stream result (Claim 6) or structure or method for providing a filtered/multiplexed/decimated data stream result (Claims 12, 17), since no concrete or tangible result such as a diagnosis performed on a patient or a display device producing a display based upon the altered data stream is claimed. Dependent claims do not remedy this statutory deficit.

### **Response to Arguments**

Absent the transformation of an article into a different state or thing which signal processing does not do, the remaining statutory test as previously noted is a test on the

*result* so as to ascertain if it is useful, concrete and tangible. Such an instruction is irrespective of whether the result occurs outside a computer or if it is tangible structure that is producing the result. Here the result in all instances is an altered data stream as opposed to formation of a diagnostic display or a notification to medical personnel or a controlling of an end-device. Therefore while there is no disagreement that applicant's demodulation results are useful, they are produced in an abstract form as altered data and fail the 'concrete and tangible..' portion.

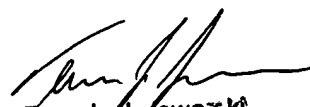
**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Jaworski Francis J. at telephone number 571-272-4738.

FJJ:fjj

12242006

  
Francis J. Jaworski  
Primary Examiner